THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.11923 of 2007

18.6.2007

Between:

The Andhra Pradesh State Cooperative Bank Ltd.,
Troop Bazar, Hyderabad

… Petitioner

AND

The District Collector, Nellore District
And another

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.11923 of 2007

ORDER:

The Andhra Pradesh State Cooperative Bank Limited (APCOB) is the petitioner. A writ of Mandamus directing the first respondent not to disburse a sum of Rs.61,10,134/- towards compensation for 956 cashew-nut trees existing in the surplus land surrendered by the second respondent and a sum of Rs.38,82,281/- towards compensation awarded for his lands till the claim applications filed by the petitioner against the principal debtor is finally decided.

The petitioner statedly advanced credit facilities to M/s.Kumara Swamy Aqua Products (P) Ltd., Nellore (hereafter called, the company). Second respondent is the guarantor (not a mortgagor). When there was default in repayment, petitioner Bank filed arbitration case being ARC No.13/99/R1 against the company before the Deputy Registrar/Officer on Special Duty (OSD), APCOB, under Section 71 of the Andhra Pradesh Cooperative Societies Act, 1964 (the Act, for brevity) for recovery of certain amount. After receiving the notice, second respondent challenged the said proceedings in W.P.No.24127 of 1999. The same is pending. In the meanwhile, the land belonging to the second respondent was acquired by the first respondent and the compensation for 956 cashew-nut trees in the land surrendered by the second respondent pursuant to land ceiling proceedings is being paid to him. Therefore, the Managing Director of the petitioner Bank addressed a communication dated 10.5.2007 to the District Collector, Nellore, requesting to deposit with the petitioner the entire amount of Rs.99,92,415/- payable to the second respondent. In response thereto, first respondent addressed a D.O. letter on 18.5.2007 informing that as soon as the lands are released by the Government the amount would be deposited with the petitioner Bank. In spite of the same, petitioner again filed the instant writ petition apprehending that

the Sub-Collector, Gudur, might disburse the amount to the second respondent.

Learned Counsel for petitioner submits that as the second respondent only guarantor and his property is not mortgaged to the petitioner Bank as a surety, petitioner cannot rely on Section 73 of the Transfer of Property Act, 1882 (TP Act, for brevity). He submits that the Deputy Registrar/OSD, before whom the case under Section 71 of the Act is pending, is likely to pass orders shortly and if the orders are passed against the principal debtor, the petitioner would not be able to recover the same from the second respondent who has guaranteed repayment of the loan.

Learned Counsel for the petitioner is not able to place any law before this Court which enables this Court to direct the first respondent not to disburse the amount due to the second respondent to which he is admittedly entitled in law as legitimate claimant for the land acquired and also for the principles belonging to him. In the absence of any law prohibiting the first respondent to do so, writ of Mandamus would not lie nor the petitioner has a right that can be enforced in a writ petition. If ultimately the petitioner's ARC is allowed, he has remedy of executing the award as per Rule 52 of the Andhra Pradesh Cooperative Societies Rules, 1964. Secondly under Section 73 of TP Act only when the mortgaged property is acquired under the Land Acquisition Act, 1894, or any other enactment providing for compulsory acquisition of immovable property, mortgagee shall be entitled to ask for payment of compensation payable for the land acquired. In this case, second respondent is admittedly guarantor and therefore Section 73 of the Act has no application. This legal position is admitted by the learned Counsel for the petitioner.

The writ petition is misconceived and is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

June 18, 2007.
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